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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/596,921	06/19/2000	Tom Van Horn	MCTA-005/00US	4483
758	7590	11/28/2005	EXAMINER	
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			SMITH, JEFFREY A	
			ART UNIT	PAPER NUMBER
			3625	
DATE MAILED: 11/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

11/18/05

Office Action Summary

Application No.

09/596,921

Applicant(s)

VAN HORN ET AL.

Examiner

Jeffrey A. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 26-30, 50-58, 66-70 and 77-121 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-13, 26-30, 50-58, 66-70 and 77-121 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, 26-30, 50-58, 66-70, drawn to methods and systems for producing or determining a flash demand curve for a featured item, or for implementing a flash demand curve for a featured item in the group-buying sale of a featured item, classified in class 705, subclass 26.
- II. Claims 77-96, and 116-121, drawn to systems and method for facilitating communications among buyers and a seller during an on-line group-buying sale, classified in class 705, subclass 80.
- III. Claims 97-102, drawn to a graphic user interface, classified in class 715, subclass 780.

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IV. Claims 103-115, drawn to a method and program product for displaying data on a display device, classified in class 715, subclass 809.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II (and III-IV) are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01).

In the instant case, the different inventions have different modes of operation. It is noted that Group I claims recite a flash demand curve (which is a demand curve for a featured item that is generated based upon offers or votes for a featured item). Group II-IV claims include certain dependent claims which recite a demand curve, however, such demand curve is not construed as being directed to a flash demand curve since such curves are not demand curves for a featured item based upon offers or votes for a featured item. Since there is a fundamental and patentable distinction between the data which is represented by the recited curves, and since the differences in

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the data affect the modes of operation of Group I and Groups II-IV claims, election between such inventions is proper.

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the interface of Group III is not required in the negotiating room system (or associated method). It is apparent, as evidenced by the recitations provided in Group II claims, that the specifics of the interface of Group III do not move in any way to bring patentable distinction to the Group II claims. This is because there is no reliance on such specific interface. There is, however, reliance on the specific functionality of the system (and associated method) in facilitating communications between buyers and a seller. Such functionality alone serves to impart patentable distinction to the Group II system (and associated method). See MPEP § 806.05(d).

Inventions IV and III are related as process (and associated program product) and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially

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different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process (and associated program product) of Group IV does not require the use of the specific interface in which four distinct display areas are present. The process (and associated program product) of Group IV can be conducted in a manner in which all data is displayed sequentially rather than concurrently. Even in the case in which there is simultaneous display (as in claim 104), such display can be via a common display area. See MPEP § 806.05(d).

Inventions II and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions achieve different effects. The method of Group II claims (including the system) result in the facilitation of communication between buyers and at least one seller. The method (and associated program product) of Group IV claims achieves merely the display of data on a display device.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for any of Groups I-IV is not required for the others of Groups I-IV, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in

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compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is (571) 272-6763. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on (571) 272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey A. Smith
Primary Examiner
Art Unit 3625

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